

## **Exhibit 3**

**Excerpts from Deposition of Chris Allen,  
dated September 21, 2021**

<p>IN THE UNITED STATES DISTRICT COURT</p> <p>FOR THE DISTRICT OF MONTANA</p> <p>BUTTE DIVISION</p> <hr/> <p>COTTONWOOD ENVIRONMENTAL                      Case No.: 2:18-CV-00028-BMM</p> <p>LAW CENTER, et al.</p> <p>Plaintiffs,</p> <p>vs.</p> <p>RON EDWARDS, in his official</p> <p>capacity as manager of the Big Sky</p> <p>Water and Sewer District, et al.</p> <p>Defendants.</p> <hr/> <p>VIDEOCONFERENCE VIDEO-RECORDED DEPOSITION OF</p> <p>CHRIS ALLEN</p> <p>Taken at:</p> <p>Nordhagen Court Reporting</p> <p>1734 Harrison Avenue</p> <p>Butte, Montana</p> <p>September 21, 2021</p> <p>10:01 a.m.</p>	<p>1                      APPEARANCES OF COUNSEL (by videoconference):</p> <p>2</p> <p>3                      FOR THE DEPONENT:</p> <p>4                      REID J. PERKINS</p> <p>5                      Attorney at Law</p> <p>6                      WORDEN THANE, PC</p> <p>7                      321 West Broadway, Suite 300</p> <p>8                      Missoula, MT 59702</p> <p>9                      rperkins@wordenthane.com</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20                      Also present:</p> <p>21                      Colby Gonzalez, Cottonwood Intern (by videoconference)</p> <p>22                      John Nordhagen, Recording Operator</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 3</p>
<p>1                      APPEARANCES OF COUNSEL (by videoconference):</p> <p>2</p> <p>3                      FOR THE PLAINTIFFS:</p> <p>4                      JOHN MEYER</p> <p>5                      Attorney at Law</p> <p>6                      COTTONWOOD ENVIRONMENTAL LAW CENTER</p> <p>7                      P.O. Box 412</p> <p>8                      Bozeman, MT 59771</p> <p>9                      john@cottonwoodlaw.org</p> <p>10</p> <p>11                      FOR THE DEFENDANT BIG SKY WATER and SEWER DISTRICT:</p> <p>12                      ANDREA M. BRONSON</p> <p>13                      Attorney at Law</p> <p>14                      DAVIS GRAHAM &amp; STUBBS, LLP</p> <p>15                      1550 17th Street, Suite 500</p> <p>16                      Denver, CO 80202</p> <p>17                      andrea.bronson@dgsllaw.com</p> <p>18</p> <p>19                      CYNTHIA D. BROOKS</p> <p>20                      Attorney at Law</p> <p>21                      DONEY CROWLEY PC</p> <p>22                      P.O. Box 1185</p> <p>23                      Helena, MT 59601</p> <p>24                      cbrooks@doneylaw.com</p> <p>25</p> <p style="text-align: right;">Page 2</p>	<p>1                      I N D E X</p> <p>2                      Witness:                      Page:</p> <p>3                      CHRIS ALLEN</p> <p>4                      Examination by Mr. Meyer                      . . .                      7</p> <p>5                      Examination by Ms. Bronson                      . . .                      89</p> <p>6                      Examination by Mr. Meyer                      . . .                      92</p> <p>7</p> <p>8                      E X H I B I T S</p> <p>9                      NO.                      PAGE                      DESCRIPTION</p> <p>10                      1                      18                      01/17/20 Upper Gallatin Nutrient</p> <p>11                                                                                     Assessment &amp; Reduction Plan</p> <p>12                      2                      45                      09/28/15 Resort Area Wastewater</p> <p>13                                                                                     Analysis</p> <p>14                      3                      14                      09/16/21 Perkins letter</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 4</p>

<p>1 in this case, essentially applied anywhere within the  2 watershed - was found to be -- you know, the municipal  3 wastewater was determined to be the largest source,  4 the mass balance approach or the amount that would  5 make it into the groundwater and into the stream is  6 potentially significantly different.</p> <p>7 <b>Q. Do you see the highlighted paragraph here?</b>  8 A. I do.</p> <p>9 <b>Q. I'm trying to understand that paragraph.</b>  10 <b>Can you help me understand that?</b>  11 <b>It says the upgrade to the Big Sky Water and</b>  12 <b>Sewer District treatment plant will reduce the</b>  13 <b>concentration of effluent to less than 5 milligrams</b>  14 <b>per liter nitrogen. Maybe we can start right there.</b>  15 <b>So if you reduced it by 75 percent to less than</b>  16 <b>5 milligrams, what does that, what does that -- does</b>  17 <b>that imply that the concentration of effluent is</b>  18 <b>currently at somewhere around 20, or so?</b>  19 MS. BRONSON: Objection; lack of  20 foundation and seeking expert testimony.</p> <p>21 <b>Q. (By Mr. Meyer) Mr. Allen, you can answer</b>  22 <b>that. If you're reading your screen, go ahead and</b>  23 <b>read that from whoever.</b>  24 A. The assumption that we used for nitrogen  25 concentrations in the irrigation water is available in</p> <p style="text-align: right;">Page 21</p>	<p>1 reservoir of nitrates below the golf course, and based  2 on that existing nitrate, which will slowly be moving  3 through that aquifer, nitrate abatement is an  4 effective means of reducing nitrogen concentrations in  5 the North Fork of the Gallatin River.</p> <p>6 <b>Q. (By Mr. Meyer) And in this report, it's</b>  7 <b>stated that the primary abatement -- the largest</b>  8 <b>source of abatement can be upgrade of the water</b>  9 <b>treatment plant; is that correct?</b>  10 A. In reference to the total load to the  11 watershed. So this is the amount of nitrogen being  12 applied to the watershed, not specifically making it  13 into surface water or groundwater, but the wastewater  14 treatment upgrade will reduce the mass loading of  15 nitrogen into the watershed to a significant degree.</p> <p>16 <b>Q. And does that mass load from the water</b>  17 <b>treatment plant make its way to the surface water?</b>  18 A. That --  19 MR. PERKINS: John, just real quick,  20 again, are you asking him what the report says or are  21 you asking him to form a new opinion?  22 MR. MEYER: I'm asking him what he knows.  23 MR. PERKINS: And that doesn't answer my  24 question.  25 MR. MEYER: I'm not asking for an opinion;</p> <p style="text-align: right;">Page 23</p>
<p>1 the report.</p> <p>2 <b>Q. Do you see the next line where it says</b>  3 <b>(quoted as read):</b>  4 <b>"Further load reduction associated with</b>  5 <b>wastewater irrigation, including accumulated nitrogen</b>  6 <b>load in the aquifer, can be achieved by intercepting</b>  7 <b>and mitigating shallow groundwater utilizing wetlands</b>  8 <b>at known point sources (e.g. chapel springs) and</b>  9 <b>general placement along the West Fork riparian</b>  10 <b>corridor"?</b>  11 A. I see that sentence, yes.</p> <p>12 <b>Q. Does that imply that the wastewater</b>  13 <b>irrigation -- the wastewater is being overapplied in</b>  14 <b>the form of irrigation?</b>  15 MS. BRONSON: Objection, same objection.  16 MR. PERKINS: Chris, you can answer, if  17 you can.</p> <p>18 <b>THE WITNESS: We performed no analysis to</b>  19 <b>estimate the actual irrigation loads and whether or</b>  20 <b>not the methods of irrigation would be increasing or</b>  21 <b>otherwise managing -- or altering nitrogen leaching.</b>  22 <b>So we did not investigate how wastewater is applied to</b>  23 <b>the golf course and whether or not that would cause</b>  24 <b>leaching.</b>  25 We have data to suggest there is a</p> <p style="text-align: right;">Page 22</p>	<p>1 I'm asking what he knows.  2 MR. PERKINS: What he knows can be a fact,  3 it can also be an opinion. This sounds like you're  4 asking him what his opinion is, to me. Just because  5 he knows an opinion doesn't mean that it's fair game.  6 Are you asking for his opinion or are you  7 asking him if he factually has witnessed something?  8 MR. MEYER: I'm asking him what he knows  9 based on what he's learned and seen.  10 MR. PERKINS: Okay, so you're asking for  11 his opinion. So I'll object to the extent that you're  12 asking him to form an opinion, it sounds like, that's  13 outside of this report that he did.  14 MR. MEYER: Okay.  15 MS. BRONSON: Same objection.  16 MR. PERKINS: Chris, if it is outside of  17 the report, I would say you don't have to answer the  18 question; if it's within the report, then feel free.  19 MR. MEYER: Let me stop you right there,  20 Reid. Are you directing your client not to answer the  21 question?  22 MR. PERKINS: If you're asking him to form  23 an opinion that is outside of this report, then yes,  24 because you're asking him to become an expert witness  25 on your behalf without having designated him as an</p> <p style="text-align: right;">Page 24</p>

1 expert or hiring him.

2 If you're asking him what his opinion is  
3 based on this report, then that's fine, I'm okay with  
4 that, but what it sounds to me like you're doing is  
5 saying, "Chris, please form an opinion for me on  
6 something that you haven't yet formed an opinion on."

7 That is not appropriate hybrid expert  
8 witness testimony.

9 **Q. (By Mr. Meyer) Mr. Allen, have you formed**  
10 **any opinions at all about the source of nitrogen into**  
11 **the groundwater below the golf course, the Meadow**  
12 **Village Golf Course?**

13 A. My professional opinion is that nitrogen  
14 tracking is extremely difficult because it is an  
15 incredibly labile component. It moves from the  
16 subsurface very easily. Subsurface dynamics and  
17 movement are notoriously difficult to quantify. None  
18 of those analyses were performed as a part of this  
19 report, and so my professional opinion is that I don't  
20 have the information I would require to make that  
21 opinion.

22 The report outlines potential sources that we  
23 were able to say or were able -- that I feel  
24 comfortable stating, based on the analysis -- or the  
25 data and the analysis in the data that we had

Page 25

1 providing ranges and knowing that most of our analysis  
2 were intentionally high level. And by "high level," I  
3 mean detailed analysis -- analyses at the level  
4 required to form an opinion on causation were not  
5 performed.

6 I'm not sure if that answers the question.

7 **Q. I'm going to have us go down to page 21**  
8 **here. I guess I can take us there. It says:**

9 **"In the region, primary anthropogenic**  
10 **sources were found to be application of treated**  
11 **municipal wastewater to three golf courses and**  
12 **discharge from onsite wastewater treatment systems."**

13 **Do you see that?**

14 A. I see that, yes.

15 **Q. Do you still agree with that statement?**

16 A. I do. Those are general loads to the  
17 aquifer for the entire studied watershed.

18 **Q. And what determines whether nitrogen in**  
19 **the aquifer then moves to surface water?**

20 MS. BRONSON: Objection; seeking expert  
21 testimony.

22 MR. PERKINS: And, John, I'll raise the  
23 same objection. It sounds like you're asking him to  
24 form an opinion or give expert testimony beyond what's  
25 in this report.

Page 26

1 **Q. (By Mr. Meyer) Mr. Allen, do you know?**

2 A. I wanted to clarify both of these numbers  
3 are loads to the watershed, not specifically to  
4 groundwater or to surface water.

5 **Q. What does that mean exactly, "load to**  
6 **watershed"?**

7 A. Nitrogen dynamics are relatively  
8 complicated and variable, so the numbers that we could  
9 stand on were essentially the mass load into the  
10 watershed. So that would be actually in the form of  
11 -- or in reference to the golf course, that would be  
12 the amount of nitrogen sprinkled onto the grass from a  
13 septic system. That would be the amount of nitrogen  
14 that exited the septic tank, and then there are a  
15 tremendous number of biotic processes that transform  
16 that nitrogen as water seeps down through the soil  
17 profile or as wastewater goes through the drain field  
18 and then into the groundwater. And there are so many  
19 variables there that we could not, given the scope of  
20 our desktop analysis, really tease a lot of that  
21 apart, and so we focused on load to watershed.

22 **Q. The nitrogen that percolates through the**  
23 **grass, hits the groundwater, it still ends up in the**  
24 **form of nitrogen, according to this report ; is that**  
25 **correct?**

Page 27

1 A. For me, the rub comes in as we have an  
2 extraordinarily difficult time calculating the amount  
3 of nitrogen that moves down through that soil profile  
4 or through --

5 **Q. Can we -- Chris, excuse me. There's some**  
6 **background music. I'm just hoping we can have you --**  
7 **can you resay what you just said?**

8 A. We've got a little "On With the Show,"  
9 which is the name of the song happening in the  
10 background. Would it be wise for me to take a moment  
11 and request a pause on the music or can you hear me  
12 okay?

13 **Q. I can hear you now. If you're**  
14 **comfortable -- if you need to take a break, let me**  
15 **know.**

16 A. I'm fine. It's more of what I could do to  
17 eliminate background noise.

18 **Q. Okay.**

19 A. This song and the -- well, can you restate  
20 the question for me, please?

21 MR. MEYER: Can I have the reporter reread  
22 the question, please?

23 (The record was read back as follows:

24 "QUESTION: The nitrogen that percolates  
25 through the grass, hits the groundwater, it still ends

Page 28